

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRIANNA PARKER,

§

Plaintiff,

§

vs.

Civil Action No. 3:15-cv-2528

BILL MELTON TRUCKING, INC., and
EDWARD THACKER

§

Defendants.

§

DEFENDANT'S NOTICE OF REMOVAL

Defendant ("Defendant") files this Notice of Removal under 28 U.S.C. § 1446(a) and 28 U.S.C. § 1332(a)(2).

**A.
INTRODUCTION**

Plaintiff is Brianna Parker; Defendants are Bill Melton Trucking, Inc. and Edward Thacker, who has not been served with process as of this date (collectively "Defendants").

On April 22, 2015, Plaintiff sued Defendants on the account of injuries allegedly sustained by Plaintiff on May 22, 2013 as a result of a traffic accident with Defendants.

Plaintiff served Defendant Bill Melton Trucking, Inc. its Summons and Petition, through substituted service on the Secretary of Transportation. Defendant actually received via certified mail on July 2, 2015, Plaintiff's Petition and Citation, for purposes of effectuating service on Defendant Bill Melton Trucking, Inc., as reflected in the Citation and Officer's Return on file with the 298th Judicial District Court in Dallas

County. *See Exhibit A* attached hereto. Therefore, July 2, 2015 is the date from which the thirty (30) day window for removal began to run. 28 U.S.C. §1446(b)(1); *see, e.g., Tucci v. Harford Fin.Servs.Grp.*, 600 F.Supp.2d 630, 632-33 (D.N.J.2009) (30-day period begins to run when D actually receives summons and complaint; period does not run from service on D's statutory agent). As such, Defendant Bill Melton Trucking, Inc., as the only party served and making an appearance, files this Notice of Removal within the 30-day time period required by 28 U.S.C. § 1446(b). *Bd. Of Regents of Univ. of Tex.Sys. v. Nippon Tel. & Tel.Corp.*, 478 F.3d 274, 278 (5th Cir. 2007). Defendant Edward Thacker, now deceased, has not yet been served, and, thus, his consent be removed is not required.

B. BASIS FOR REMOVAL

Removal is proper because this Court possesses diversity jurisdiction over the matter. 28 U.S.C. § 1332(a). Additionally, Plaintiff has provided an itemization of her past medical expenses allegedly paid or incurred to date of no less than \$71,498, which indicates Plaintiff seeks over \$75,000, the threshold required for Federal diversity jurisdiction.

Plaintiff states in her Petition that she is a citizen of the State of Texas, which constitutes a judicial admission with respect to Plaintiff's state of residency. *See Plaintiff's Original Petition, Section II.* Additionally, Plaintiff judicially admits that unserved Defendant Edward Thacker is a citizen of Arkansas. *See id.* Finally, Defendant Bill Melton Trucking, Inc. is citizen of Arkansas as an Arkansas Corporation with its

principal place of business located within the state of Arkansas. Plaintiff judicially admits same in her Original Petition. *See id.*

Given that Plaintiff is a citizen of Texas and Defendants are citizens of Arkansas, there is complete diversity among the parties to this suit, and removal based on diversity jurisdiction is proper.

An index of the state court docket and copies of all pleadings, process, orders, and other filings in the state-court suit are attached to the Notice of Removal as required by 28 U.S.C § 1446(a) as **Exhibit B**.

Venue is proper in the U.S. District Court for the Northern District of Texas under 28 U.S.C. § 1441(a) because the state court where the suit has been pending is located in this district.

Defendants have promptly filed a copy of this notice of removal with the clerk of the state court where the suit has been pending.

**C.
JURY DEMAND**

A jury trial has been demanded in state court by Plaintiff.

**D.
COURT INFORMATION**

The address and contact information for the 192nd District Court of Dallas County, Texas is as follows:

298th Judicial District court
Hon. Emily G. Tobolowsky
George L. Allen, Sr. Courts Building
600 Commerce Street
8th Floor New Tower
Dallas, TX 75202
(214) 653-6779 Telephone

CONCLUSION

Because Bill Melton Trucking, Inc., the only served Defendant in this lawsuit, is a citizen of the state of Arkansas and Plaintiff is a citizen of Texas, complete diversity exists creating diversity jurisdiction under 28 U.S.C. § 1332(a), and venue is proper in the U.S. District Court for the Northern District of Texas under 28 U.S.C. § 1441(a), Defendant Bill Melton Trucking, Inc. asks the Court to remove this suit to the U.S. District Court for the Northern District of Texas, Dallas Division.

Respectfully Submitted,

THE BASSETT FIRM

/s/ Mike H. Bassett

MIKE H. BASSETT
SBN: 01890500
Two Turtle Creek Village
3838 Oak Lawn Avenue, Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
mbassett@thebassettfirm.com

**ATTORNEY FOR DEFENDANT,
BILL MELTON TRUCKING, INC.**

CERTIFICATE OF SERVICE

I certify that a true copy of this document was forwarded to the following counsel of record on this 30th day of July, 2015, pursuant to the Texas Rules of Civil Procedure:

Via Via ECF-PACER

Mr. Nick Pittman
The Pittman Law Firm, P.C.
100 Crescent Court, Ste. 700
Dallas, Texas 75201-2112

/s/ Mike H. Bassett
MIKE H. BASSETT

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Brianna Parker

DEFENDANTS

Bill Melton Trucking, Inc. and Edward Thacker

(b) County of Residence of First Listed Plaintiff Dallas County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Independence County, AR
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

(c) Attorneys (firm Name, Address, and Telephone Number)
Aubrey "Nick" Pittman - The Pittman Law Firm, P.C.
100 Crescent Court, Suite 700, Dallas, Texas 75201
(214) 459-3454

Attorneys (If Known)
Mike H. Bassett - The Bassett Firm
3838 Oak Lawn Avenue, Suite 1300, Dallas, Texas 75219
(214) 219-9900

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)
28 USC 1446(a) and 28 USC 1332(a)

VI. CAUSE OF ACTION

Brief description of cause:
Negligence

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED PENDING OR CLOSED CASE(S)
(See instructions):

JUDGE SIGNATURE OF ATTORNEY OF RECORD DOCKET NUMBER

DATE 07/30/2015 SIGNATURE OF ATTORNEY OF RECORD DOCKET NUMBER

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING JFP JUDGE MAG. JUDGE

United States District Court
Northern District of Texas

Supplemental Civil Cover Sheet For Cases Removed
From State Court

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court
298th Judicial District court
George L. Allen, Sr. Courts Building
600 Commerce Street
8th Floor New Tower
Dallas, TX 75202

Case Number
DC-15-04560

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Party Type

Brianna Parker - Plaintiff

Attorney(s)

Nick Pittman
The Pittman Law Firm, P.C.
100 Crescent Court, Ste. 700
Dallas, Texas 75201-2112

Bill Melton Trucking, Inc. and
Edward Thacker - Defendants

Mike H. Bassett - SBN: 01890500
The Bassett Firm, Two Turtle Creek Village, 3838 C
Dallas, Texas 75219, Tel.: 214-219-9900, Fax: 214-
email: efile@thebassettfirm.com

3. Jury Demand:

Was a Jury Demand made in State Court?

Yes

No

If "Yes," by which party and on what date?

Plaintiff _____
Party _____

April 22, 2015 _____
Date _____

Supplemental Civil Cover Sheet
Page 2

4. Answer:

Was an Answer made in State Court?

Yes

No

If "Yes," by which party and on what date?

Bill Melton Trucking, Inc.
Party

July 10, 2015
Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason(s) for No Service</u>
Defendant, Edward Thacker	Unknown

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate any changes from the style on the State Court papers and the reason for that change:

<u>Party</u>	<u>Reason</u>
None	

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claim(s)</u>
Plaintiff	Negligence

**FORM NO. 353-4—CITATION
THE STATE OF TEXAS**

CERT/MAIL COH

To: **BILL MELTON TRUCKING INC
BY SERVING CHAIRMAN OF THE STATE HIGHWAY AND
PUBLIC TRANSPORTATION COMMISSION
125 E. 11TH STREET
AUSTIN, TX, 78701-2483**

CITATION

No.: DC-15-04560-M

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURES** petition, a default judgment may be taken against you.
Your answer should be addressed to the clerk of the 298th District Court
at 600 Commerce Street, Dallas, Texas 75202.

Said **PLAINTIFF** being **BRIANNA PARKER**

Filed in said Court 22nd day of April, 2015 against
BILL MELTON TRUCKING INC. AND EDWARD THACKER

For suit, said suit being numbered **DC-15-04560-M** the nature of which demand is as follows:

Suit On **MOTOR VEHICLE ACCIDENT** etc.

as shown on said petition , a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

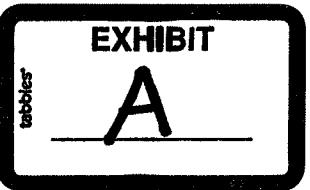
Given under my hand and the Seal of said Court at office on this the 17th day of June, 2015

ATTEST: FELICIA PITRE

Clerk of the District Courts of Dallas, County, Texas

Springe McKinley
SPRINGE MCKINLEY, Deputy

DALLAS COUNTY COURTHOUSE
TEXAS
NOT PAID



OFFICER'S RETURN
FOR INDIVIDUALS

Cause No. DC-15-04560

Court No: 298th District Court

Style: BRIANNA PARKER

vs.

BILL MELTON TRUCKING INC, et al

Received this Citation the 17th day of June, 2015 at 2:47 o'clock P.M. Executed at Dallas, within the County of Dallas, State of Texas, on the 22nd day of June, 2015 at 7:05 o'clock A.M. by summoning Jeff Cuz within the County of Dallas, by delivering to Randall J. Johnson of State Highway and Public Commission President - Vice President - Registered Agent - in person, of the said was marked and signed a true copy of this citation together with the accompanying copy of Plaintiff's original petition, WAS MAILED UNITED STATES CERTIFIED MAIL RETURN RECEIPT REQUESTED having first indorsed on same the date of delivery.

OFFICER'S RETURN
FOR CORPORATIONS

Received this Citation the 17th day of June, 2015 at 2:47 o'clock P.M. Executed at Dallas, within the County of Dallas, State of Texas, on the 22nd day of June, 2015 at 7:05 o'clock A.M. by summoning Jeff Cuz within the County of Dallas, by delivering to Randall J. Johnson of State Highway and Public Commission President - Vice President - Registered Agent - in person, of the said was marked and signed a true copy of this citation together with the accompanying copy of Plaintiff's original petition, WAS MAILED UNITED STATES CERTIFIED MAIL RETURN RECEIPT REQUESTED having first indorsed on same the date of delivery.

The distance actually traveled by me in serving such process was 7 miles and my fees are as follows:
For Serving Citation \$ 76.00
For Mileage \$ _____
For Notary \$ _____
Total Fees \$ _____

(Must be verified if served outside the State of Texas)

State of _____

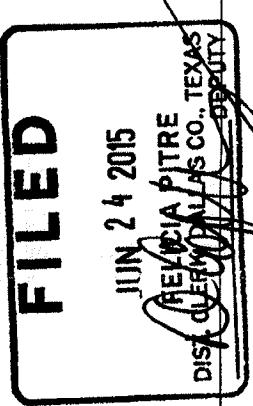
County of _____

Day of _____, 2015

Signed and sworn to me by the said Jeff Cuz, before me this 20, to certify which witness my hand and seal of office.

924-8901-0661-5400.00060-294U-30
Seal

State & County of _____



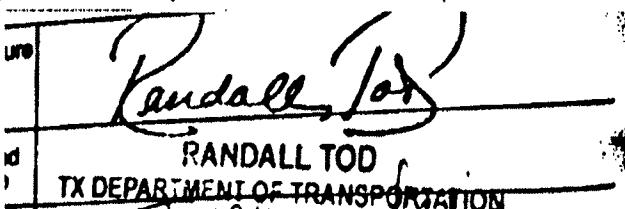


Date: June 22, 2015

MAIL MAIL:

The following is in response to your June 22, 2015 request for delivery information on your Certified Mail™/RRE item number 92148901066154000060291130. The delivery record shows that this item was delivered on June 22, 2015 at 7:05 am in AUSTIN, TX 78714. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,
United States Postal Service

The customer reference information shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

DC1504560 -M SM DP
BILL MELTON TRUCKING INC.
SERVING CHAIRMAN OF THE STATE HIGHWAY AND
PUBLIC TRANSPORTATION COMMISSION
125 E 11TH ST
AUSTIN TX 78701-2483

COMPLETE THIS SECTION		
COMPLETE THIS SECTION ON DELIVERY		
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card if it is needed.</p> <p>■ Attach this card to the back of the envelope or on the front if space permits.</p>		
<p>Article Addressed to: <u>Bill Melton</u> 06 2015</p> <p>Article Number: <u>7011 0470 0002 1476 9274</u></p> <p>(Transfer from service label)</p>		
A. Signature 	X <small>Carolyn Melton</small> Agent B. Received by (Printed Name)	
		C. Date of Delivery <u>7-3-15</u>
<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>		
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>		

Skip to Main Content Logout My Account Search Menu New Civil District Search Refine Search Back

Location : All District Civil Courts Images Help

REGISTER OF ACTIONS

CASE NO. DC-15-04560

BRIANNA PARKER vs. BILL MELTON TRUCKING INC, et al

\$
\$
\$
\$

Case Type: MOTOR VEHICLE ACCIDENT
 Date Filed: 04/22/2015
 Location: 298th District Court

PARTY INFORMATION

DEFENDANT BILL MELTON TRUCKING INC

Lead Attorneys
MICHAEL H BASSETT
Retained
 214-219-9900(W)

DEFENDANT THACKER, EDWARD

PLAINTIFF PARKER, BRIANNA

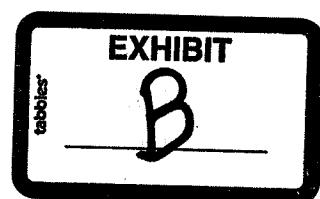
AUBREY D PITTMAN
Retained
 214-914-2403(W)

EVENTS & ORDERS OF THE COURT

04/22/2015	OTHER EVENTS AND HEARINGS	
04/22/2015	NEW CASE FILED (OCA) - CIVIL	
04/22/2015	<u>ORIGINAL PETITION</u> <i>Plaintiff's Original Petition</i>	
04/22/2015	<u>ISSUE CITATION</u>	
04/29/2015	<u>CITATION</u> BILL MELTON TRUCKING INC THACKER, EDWARD	Unserved Unserved
04/30/2015	<u>CITATION ISSUED</u>	
06/09/2015	<u>REQUEST FOR SERVICE</u>	
06/09/2015	<u>ISSUE CITATION COMM OF INS OR SOS</u> <i>PER ATTY HE WILL MAIL THE 25\$ CHECK TO COH</i>	
06/17/2015	<u>CITATION SOS/COI/COH/HAG</u> CMR #9214-8901-0661-5400-0060-2911-30 (COH) BILL MELTON TRUCKING INC	Served Returned
06/17/2015	<u>CITATION SOS/COI/COH/HAG</u> CMR #9214-8901-0661-5400-0060-2937-45 (COH) THACKER, EDWARD	Unserved
06/29/2015	<u>CANCELED Final Disposition Hearing</u> (9:00 AM) (Judicial Officer TOBOLOWSKY, EMILY) <i>BY COURT ADMINISTRATOR</i>	
06/29/2015	<u>CERTIFICATE OF SERVICE</u> EDWARD THACKER	
06/29/2015	<u>CERTIFICATE OF SERVICE</u> BILL MELTON TRUCKING INC -- RA CAROLYN MELTON	
07/01/2015	<u>JURY DEMAND</u>	
07/01/2015	<u>RETURN OF SERVICE</u> <i>RETURN OF SERVICE UPON EDWARD THACKER THRU HIS MOTHER</i>	
07/10/2015	<u>ORIGINAL ANSWER - GENERAL DENIAL</u>	
04/25/2016	<u>Jury Trial - Civil</u> (9:00 AM) (Judicial Officer TOBOLOWSKY, EMILY)	

FINANCIAL INFORMATION

PLAINTIFF PARKER, BRIANNA		
Total Financial Assessment		545.00
Total Payments and Credits		545.00
Balance Due as of 07/30/2015		0.00
04/24/2015	Transaction Assessment	295.00
04/24/2015	CREDIT CARD - TEXFILE (DC) Receipt # 23889-2015-DCLK	(295.00)
06/09/2015	Transaction Assessment	220.00
06/09/2015	CREDIT CARD - TEXFILE (DC) Receipt # 33225-2015-DCLK	(220.00)
07/01/2015	Transaction Assessment	30.00
07/01/2015	CREDIT CARD - TEXFILE (DC) Receipt # 38135-2015-DCLK	(30.00)



No. DC-15-04560

Tonya Pointer

BRIANNA PARKER,*Plaintiff,*

v.

**BILL MELTON TRUCKING INC., and
EDWARD THACKER,***Defendants.***§ IN THE DISTRICT COURT****§****§****§ DALLAS COUNTY, TEXAS****§****§****§****§****JUDICIAL DISTRICT****PLAINTIFF'S ORIGINAL PETITION
AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Brianna Parker complaining of Bill Melton Trucking Inc. and Edward Thacker (collectively, "Defendants") and for cause of action would respectfully show the Court as follows:

**I.
DISCOVERY**

1. *Discovery Control Plan.* Pursuant to Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE, discovery in this case should be conducted under Level 3. Therefore, Plaintiff respectfully requests that this Court enter an appropriate Scheduling Order so that discovery may be conducted under Level 3.

2. *Request for Disclosure.* Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff request that Defendant disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the TEXAS RULES OF CIVIL PROCEDURE. Plaintiff specifically requests the responding parties to produce responsive documents at the undersigned law offices within fifty (50) days of service of this request.

**II.
PARTIES**

3. Plaintiff Brianna Parker (Rev. Parker) is an individual who resides in Dallas County, Texas.

4. Defendant **Bill Melton Trucking Inc.** ("Melton Trucking") is, upon information and belief, an Arkansas company that may be served by **serving its registered agent, Carolyn Melton, 250 Somerset Lane, Cord, AR 72524.**

5. Defendant **Edward Thacker** ("Thacker") is, upon information and belief, an individual resident of Arkansas who may be served at **112 N. Porter St., Stuttgart, AR 72160.**

**III.
JURISDICTION AND VENUE**

6. Plaintiff affirmatively pleads that this Court has jurisdiction because the amount in controversy exceeds the minimum jurisdictional limits of the Court. Furthermore, the causes of action asserted in this matter arose in the State of Texas. Therefore, this Court has subject matter and personal jurisdiction over all parties and all claims.

7. Venue is proper in this Dallas County under the general venue statute, TEX.CIV.PRAC. & REM.CODE § 15.002(a)(1), because all or a substantial part of the events or omissions giving rise to this claim occurred in Dallas County, TX.

**IV.
FACTUAL ALLEGATIONS**

8. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

9. On May 22, 2013, Rev. Parker had just finished visiting with a fellow pastor and was heading back to her church, Friendship West Baptist Church, for bible study. She and one

of her students were in Rev. Parker's Pontiac Sunfire, traveling southbound on Interstate Highway 35E ("IH-35E") near Interstate Highway 30 ("IH-30").

10. In the lane adjacent to the lane in which Rev. Parker's automobile was traveling was a Freightliner tractor (the "Melton Tractor") that Thacker was driving, upon information and belief, on behalf of Melton Trucking. Alternatively, Melton Trucking operated as a lessor, having leased the tractor-trailer to Thacker.

11. At the time of the collision, Thacker was traveling southbound on IH-35E near the intersection at IH-30.

12. The Melton Tractor was towing a flatbed trailer that had three (3) large forklifts loaded upon the trailer. Upon information and belief, Melton Trucking was towing the forklifts throughout Texas and Arkansas and was engaged in interstate commerce.

13. When the Melton Tractor and flatbed attempted to pass under the IH-30 overpass, the load was loose and stacked too high. These facts, as well as Thacker's speed, caused the forklifts to strike the IH-30 overpass. This overpass, upon information and belief, is approximately 14.7 feet high.

14. The Melton Tractor and flatbed rolled over onto its right side into the center right lane. These forces caused the load to become further unfastened and led to the tractor and trailer drifting into the lane that was occupied by Rev. Parker's automobile.

15. The driver, Thacker, was unable to rebalance the trailer, which led to the load toppling onto Rev. Parker's automobile.

16. The Melton Tractor, flatbed trailer and the forklifts also completely rolled over onto the freeway.

17. The violent impact of the tractor-trailer and the massive forklifts upon Rev. Parker's automobile caused her vehicle eventually to collide with another vehicle on the roadway before Rev. Parker's Sunfire came to a final rest.

18. Rev. Parker was rendered momentarily unconscious as a result of the incident. Her automobile was eventually rendered totaled.

19. Since that day, Rev. Parker has had to undergo medical and psychological treatment, all stemming from this collision.

**V.
CAUSES OF ACTION**

Count I: Negligence, Negligence per se, Strict Liability and Gross Negligence

20. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

21. Defendants had a duty to Rev. Parker to provide a safely designed and manufactured product.

22. Defendants also had a duty to warn consumers of the true nature of the defective design of the Defendants' products.

23. Defendants had a duty to operate a safe tractor and trailer on the highways where the flatbed's load was towed.

24. At the time of the loading of the cargo, neither Defendant inspected the load's height or tested the adequacy of the load straps when they decided jointly to tow the loaded flatbed from Arkansas throughout Texas. At the time Thacker picked up the trailer, Defendants knew or should have known that the tractor, trailer, and load had not passed inspection that is required by state and federal regulations including, but not limited to, 49 CFR §396.

25. Upon information and belief, Thacker also failed to maintain an assured clear distance between his tractor-trailer and other vehicles on the road; failed to keep a proper lookout; failed to avoid an overpass that could not accommodate his load; and failed to maintain safe instrumentalities on the roadways. These actions contributed to the cause of the collision.

26. While at the scene of the collision, Thacker was cited for having an “oversized vehicle or load.”

27. Upon information and belief, Defendants did not have or implement a safety prevention program to ensure compliance with state and federal regulations including, but not limited to, Section 385 of the FMCSR Safety Provisions. Such a policy could have prevented Thacker from operating the tractor and trailer on the highways.

28. The tractor, flatbed trailer and load were defectively designed and/or maintained so as to render them unreasonably dangerous. This was a substantial factor in bringing about an injury during the collision, and without which the injury would not have occurred.

29. As a lessor of the trailer, Melton Trucking is strictly liable for installing and/or maintaining the inadequate tractor, flatbed trailer and load, and placing these devices into the stream of commerce.

30. In addition to the above, by their actions and omissions, Defendants also breached their duty and were negligent, grossly negligent and/or acted with malice in at least the following regards:

- a. Using improper tie-down devices and other conduct, all in violation of state and federal regulations including, but not limited to, sections 393.100 through 393.136 of the Federal Motor Carrier Safety Regulations;
- b. Failing to ensure that the tractor, flatbed trailer and load were situated “and maintained” in compliance with the requirements of state and federal regulations including, but not limited to, 49 CFR §393.86. The regulations provide that “every motor carrier, and its officers, agents, drivers,

representatives, and employees directly concerned with the installation and maintenance of equipment and accessories" must comply with the safety requirements and specifications outlined therein;

- c. Failing to observe clearly visible warning sign concerning the low structure, failing to take opportunity to detour low structure, and failing to take any evasive action to avoid striking the overhead structure, all in violation of state and federal regulations;
- d. Failure to ensure that the tractor, flatbed trailer and load had been properly and timely inspected as required by state and federal regulations including, but not limited to, 49 CFR §396.17 and §396.21;
- e. Violation of the general duty under state and federal regulations including, but not limited to, 49 CFR §396.3, of a trucking company to maintain its vehicles and trailers in good working order, to maintain repair records and inspection reports, and to make periodic inspections of each vehicle and trailer;
- f. Failure to properly inspect the tractor, flatbed trailer and load before placing the objects on the highway, as required by state and federal regulations including, but not limited to, CFR §396.13;
- g. Driving a tractor and flatbed with a load that was illegally secured and unsafe to drive under state and federal regulations or standards including, but not limited to, Sections 2 and 3 of the Commercial Motor Vehicle Handbook;
- h. Negligently servicing, repairing, installing and/or maintaining the tractor, flatbed trailer and load;
- i. Failure to properly maintain and service the tractor, flatbed trailer and load;
- j. Failing to adequately train Thacker how to test for a defective tractor, flatbed trailer and load and failing to warn Thacker of the dangers of operating the trailer without ensuring the adequacy of the straps and other devices securing the load;
- k. Failing to exercise reasonable care to discover the dangerous condition or character of the tractor, flatbed trailer and load before allowing the trailer to be used on the roadways;
- l. Failing to warn consumers of the unreasonably dangerous nature of the tractor, flatbed trailer and load;
- m. Entrusting the tractor, flatbed trailer and load to Thacker, an incompetent or reckless driver, whom the owner knew or should have known was

unlicensed, incompetent, or reckless, and whose negligence on the day of the collision was one of the proximate causes of the collision;

- n. Driving (and permitting employee to drive) at a high rate of speed under the conditions; and
- o. Failing to exercise that degree of care that other drivers would have exercised in maintaining an assured clear distance between vehicles, keeping a proper lookout, stopping safely and/or operating a dangerous instrumentality on the roadways.

31. Defendants' conduct and/or omissions identified above constitute a breach of their duties owed by statutory provision, common law and other authorities, the breach of which proximately caused damages.

32. Defendants' conduct described above constitutes strict liability, negligence, gross negligence, recklessness, and/or intentional misconduct.

Count II: Infliction of Emotional Distress and Mental Anguish

33. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

34. In addition to Plaintiff's physical pain and suffering, Defendants' breach of duty directly and proximately caused Plaintiff to suffer significant psychological difficulties including, but not limited to, psychological distress, depression, anxiety, back depression inventory and PTSD. She has been prescribed psychotropic medications and is undergoing treatment.

35. Defendants knew or should have known Defendants' conduct involved an unreasonable risk of causing emotional distress to Plaintiff. Defendants' conduct caused Plaintiff to suffer medically diagnosable and significant emotional distress.

36. Defendants' acts and omissions also demonstrated a conscious disregard for Plaintiff's emotional well-being and safety, as well as the emotional well-being and safety of other travelers on the roadways where Defendants' tractor-trailer traveled.

Count III: Vicarious Liability

37. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

38. Both Melton Trucking and Thacker are vicariously liable for the negligent inspection and negligent operation of the tractor and trailer to the extent this negligence occurred in Thacker's course of employment with Melton Trucking and/or when the trailer was under lease to or from Melton Trucking. Upon information and belief, Thacker was acting (e.g. operating the tractor and trailer) within the general authority given to him by Melton Trucking, in furtherance of its business and for the accomplishment of the object for which he was employed.

Count IV: Spoliation

39. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

40. The collision involved the Melton tractor, the flatbed trailer, the forklifts on the flatbed, and all mechanisms that were used to secure the load. Accordingly, each of these items was material to the ensuing litigation, and should have been preserved. Similarly, all repair, maintenance, and loading documentation should have been preserved. Shortly after the collision, by way of letter from Plaintiff's counsel, both Defendants were informed of their duty to preserve evidence in this matter. Despite knowing of the importance of preserving relevant evidence, Defendants, upon information and belief, conspired to conceal valuable evidence, some of which has now been lost, modified, or intentionally misplaced. Plaintiff was never provided with access to these items.

41. An inspection of these items would have revealed that the tractor, trailer and load were improperly designed, and/or dangerously loaded while in Defendants' possession, and Defendants knew or should have known of the inadequacy Defendants' load securement process.

42. These facts surrounding the collision establish that (a) there was a duty to preserve evidence; (b) Defendants negligently or intentionally (collectively) spoliated the Melton tractor, the flatbed trailer, the forklifts that were on the flatbed, and all mechanisms that were used to secure the load, as well as related design, repair/replacement records; and (c) Defendants' spoliation has prejudiced Plaintiff's ability to present her case.

Count IV: Damages

43. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

44. Defendants' acts and/or omissions were a proximate cause of the following injuries suffered by Plaintiff, for which Plaintiff seeks recovery through this Petition:

- a. Actual damages;
- b. Lost wages;
- c. Past, present, and future medical expenses for physical, emotional and mental health;
- d. Diminished earning power or earning capacity in the past and in the future;
- e. Damages awarded for the purpose of compensating Plaintiff for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind in the past and the future;
- f. All other damages naturally and/or incidentally flowing from Defendants' conduct and/or omissions;
- g. Exemplary and punitive damages as well as reasonable attorneys' fees and costs of court;
- h. Prejudgment interest; and
- i. Post judgment interest.

45. Plaintiff seeks unliquidated damages in an amount that is within the jurisdictional limits of the court.

Count V: Exemplary Damages

46. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

47. Punitive damages are warranted against Defendants for blatantly ignoring safety provisions of the FMSCR and other federal and state laws, as well as ignoring industry research establishing the inadequacy of the load securement devices, the result of which led to this tragic collision. Defendants should not have allowed the defective or inadequate instrumentalities to have been placed on the highways. This and other conduct constitutes gross negligence, for which exemplary or punitive damages should be awarded.

48. Plaintiff, therefore, seeks exemplary damages for injuries caused by Defendants' gross negligence under Texas Civil Practice & Remedies Code section 41.003(a)(3), as defined by Section 41.001(11). Plaintiff also seeks exemplary damages as a result of Defendants' willful acts or omissions or gross neglect, as provided in Texas Constitution and Texas Civil Practice & Remedies Code. Finally, Plaintiff seeks exemplary damages under any and all other statutes, acts, or law providing for such damages.

Count VI: Attorneys' Fees

49. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

50. As a result of Defendants' acts and omissions, Plaintiff has retained counsel and seeks reimbursement for reasonable attorney fees, as authorized by applicable law and in equity.

JURY DEMAND

51. Plaintiff demands a trial by jury as to all claims and all issues properly triable thereby.

PRAYER

Wherefore, Premises Considered, Plaintiff prays that Defendants be cited to appear and answer herein and, upon final trial hereof, that Plaintiff have and recover from Defendants all allowable damages, exemplary damages, pre and post-judgment interest, costs of court, attorney's fees, and such other and further relief, both general and special, at law and in equity, to which they may be justly entitled.

Respectfully Submitted,

/s/ Aubrey "Nick" Pittman
AUBREY "NICK" PITTMAN
State Bar No. 16049750

THE PITTMAN LAW FIRM, P.C.
100 Crescent Court, Suite 700
Dallas, Texas 75201-2112
214-459-3454
214-853-5912 – fax
pittman@thepittmanlawfirm.com

<u>ESERVE</u>	
CITATION	
DC-15-04560	
<hr/> <hr/> <hr/>	
BRIANNA PARKER vs. BILL MELTON TRUCKING INC, et al	ISSUED THIS 29th day of April, 2015
<hr/> <hr/> <hr/>	
FELICIA PITRE Clerk District Courts, Dallas County, Texas	By: CARMEN MOORER, Deputy
<hr/> <hr/> <hr/>	
Attorney for Plaintiff AUBREY D PITTMAN PITTMAN@THEPITTMANLAWFIRM.COM 100CRESCENT COURT SUITE 700 DALLAS TX 75201 214-459-3454	

FORM NO. 353-3 - CITATION
THE STATE OF TEXAS

To:
BILL MELTON TRUCKING INC
BY SERVING ITS REGISTERED AGENT CAROLYN MELTON
250 SOMERSET LANE
CORD AR 72524

GREETINGS:
You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **298th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being BRIANNA PARKER

Filed in said Court 22nd day of April, 2015 against
BILL MELTON TRUCKING INC AND EDWARD THACKER.

For Suit, said suit being numbered **DC-15-04560**, the nature of which demand is as follows:
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **REQ FOR DISCLOSURE**,
a copy of which accompanies this citation. If this citation is not served, it shall be returned
unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 29th day of April, 2011

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By GABRIEL MOORED, Deputy

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-15-04560

Court No.298th District Court

Style: BRIANNA PARKER

vs.

BILL MELTON TRUCKING INC, et al

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____ M. Executed at _____, within the County of _____ at _____ o'clock _____. M. on the _____ day of _____, 20_____, by delivering to the within named _____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation \$ _____
For mileage \$ _____ of _____ County, _____
For Notary \$ _____ By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____, to certify which witness my hand and seal of office.

Notary Public _____

County _____

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

EDWARD THACKER
112 N. PORTER ST.
STUTTGART AR 72160

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **298th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **BRIANNA PARKER**

Filed in said Court **22nd** day of April, 2015 against

BILL MELTON TRUCKING INC AND EDWARD THACKER,

For Suit, said suit being numbered **DC-15-04560**, the nature of which demand is as follows:
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **REQ FOR DISCLOSURE**,
a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 29th day of April, 2015.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By /s/ Carmen Moorer _____, Deputy

CARMEN MOORER

ESERVE
CITATION

DC-15-04560

BRIANNA PARKER

vs.

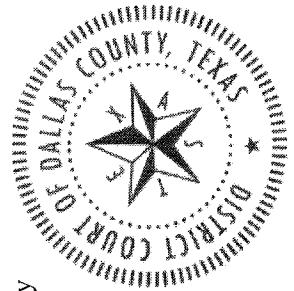
**BILL MELTON TRUCKING INC,
et al**

ISSUED THIS
29th day of April, 2015

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: CARMEN MOORER, Deputy

Attorney for Plaintiff
AUBREY D PITTMAN
PITTMAN@THEPITTMANLAWFIRM.COM
100CRESCENT COURT SUITE 700
DALLAS TX 75201
214-459-3454



**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-15-04560

Court No.298th District Court

Style: BRIANNA PARKER

vs.

BILL MELTON TRUCKING INC, et al

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each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	\$ _____
For mileage	\$ _____ of _____ County, _____
For Notary	\$ _____ By _____ Deputy

(Must be verified if served outside the State of Texas.)

before me this _____ day of _____, 20_____,

Signed and sworn to by the said _____ to certify which witness my hand and seal of office.

Notary Public _____

County _____

Tonya Pointer

No. DC-15-04560**BRIANNA PARKER,***Plaintiff,*

v.

**BILL MELTON TRUCKING INC., and
EDWARD THACKER,***Defendants.***§ IN THE DISTRICT COURT****§****§****§ DALLAS COUNTY, TEXAS****§****§****§****§****§ JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION
AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Brianna Parker complaining of Bill Melton Trucking Inc. and Edward Thacker (collectively, "Defendants") and for cause of action would respectfully show the Court as follows:

**I.
DISCOVERY**

1. *Discovery Control Plan.* Pursuant to Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE, discovery in this case should be conducted under Level 3. Therefore, Plaintiff respectfully requests that this Court enter an appropriate Scheduling Order so that discovery may be conducted under Level 3.

2. *Request for Disclosure.* Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff request that Defendant disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the TEXAS RULES OF CIVIL PROCEDURE. Plaintiff specifically requests the responding parties to produce responsive documents at the undersigned law offices within fifty (50) days of service of this request.

**II.
PARTIES**

3. Plaintiff Brianna Parker (Rev. Parker) is an individual who resides in Dallas County, Texas.

4. Defendant Bill Melton Trucking Inc. ("Melton Trucking") is, upon information and belief, an Arkansas company that may be served by serving its registered agent, Carolyn Melton, 250 Somerset Lane, Cord, AR 72524.

5. Defendant Edward Thacker ("Thacker") is, upon information and belief, an individual resident of Arkansas who may be served at 112 N. Porter St., Stuttgart, AR 72160.

**III.
JURISDICTION AND VENUE**

6. Plaintiff affirmatively pleads that this Court has jurisdiction because the amount in controversy exceeds the minimum jurisdictional limits of the Court. Furthermore, the causes of action asserted in this matter arose in the State of Texas. Therefore, this Court has subject matter and personal jurisdiction over all parties and all claims.

7. Venue is proper in this Dallas County under the general venue statute, TEX.CIV.PRAC. & REM.CODE § 15.002(a)(1), because all or a substantial part of the events or omissions giving rise to this claim occurred in Dallas County, TX.

**IV.
FACTUAL ALLEGATIONS**

8. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

9. On May 22, 2013, Rev. Parker had just finished visiting with a fellow pastor and was heading back to her church, Friendship West Baptist Church, for bible study. She and one

of her students were in Rev. Parker's Pontiac Sunfire, traveling southbound on Interstate Highway 35E ("IH-35E") near Interstate Highway 30 ("IH-30").

10. In the lane adjacent to the lane in which Rev. Parker's automobile was traveling was a Freightliner tractor (the "Melton Tractor") that Thacker was driving, upon information and belief, on behalf of Melton Trucking. Alternatively, Melton Trucking operated as a lessor, having leased the tractor-trailer to Thacker.

11. At the time of the collision, Thacker was traveling southbound on IH-35E near the intersection at IH-30.

12. The Melton Tractor was towing a flatbed trailer that had three (3) large forklifts loaded upon the trailer. Upon information and belief, Melton Trucking was towing the forklifts throughout Texas and Arkansas and was engaged in interstate commerce.

13. When the Melton Tractor and flatbed attempted to pass under the IH-30 overpass, the load was loose and stacked too high. These facts, as well as Thacker's speed, caused the forklifts to strike the IH-30 overpass. This overpass, upon information and belief, is approximately 14.7 feet high.

14. The Melton Tractor and flatbed rolled over onto its right side into the center right lane. These forces caused the load to become further unfastened and led to the tractor and trailer drifting into the lane that was occupied by Rev. Parker's automobile.

15. The driver, Thacker, was unable to rebalance the trailer, which led to the load toppling onto Rev. Parker's automobile.

16. The Melton Tractor, flatbed trailer and the forklifts also completely rolled over onto the freeway.

17. The violent impact of the tractor-trailer and the massive forklifts upon Rev. Parker's automobile caused her vehicle eventually to collide with another vehicle on the roadway before Rev. Parker's Sunfire came to a final rest.

18. Rev. Parker was rendered momentarily unconscious as a result of the incident. Her automobile was eventually rendered totaled.

19. Since that day, Rev. Parker has had to undergo medical and psychological treatment, all stemming from this collision.

**V.
CAUSES OF ACTION**

Count I: Negligence, Negligence per se, Strict Liability and Gross Negligence

20. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

21. Defendants had a duty to Rev. Parker to provide a safely designed and manufactured product.

22. Defendants also had a duty to warn consumers of the true nature of the defective design of the Defendants' products.

23. Defendants had a duty to operate a safe tractor and trailer on the highways where the flatbed's load was towed.

24. At the time of the loading of the cargo, neither Defendant inspected the load's height or tested the adequacy of the load straps when they decided jointly to tow the loaded flatbed from Arkansas throughout Texas. At the time Thacker picked up the trailer, Defendants knew or should have known that the tractor, trailer, and load had not passed inspection that is required by state and federal regulations including, but not limited to, 49 CFR §396.

25. Upon information and belief, Thacker also failed to maintain an assured clear distance between his tractor-trailer and other vehicles on the road; failed to keep a proper lookout; failed to avoid an overpass that could not accommodate his load; and failed to maintain safe instrumentalities on the roadways. These actions contributed to the cause of the collision.

26. While at the scene of the collision, Thacker was cited for having an “oversized vehicle or load.”

27. Upon information and belief, Defendants did not have or implement a safety prevention program to ensure compliance with state and federal regulations including, but not limited to, Section 385 of the FMCSR Safety Provisions. Such a policy could have prevented Thacker from operating the tractor and trailer on the highways.

28. The tractor, flatbed trailer and load were defectively designed and/or maintained so as to render them unreasonably dangerous. This was a substantial factor in bringing about an injury during the collision, and without which the injury would not have occurred.

29. As a lessor of the trailer, Melton Trucking is strictly liable for installing and/or maintaining the inadequate tractor, flatbed trailer and load, and placing these devices into the stream of commerce.

30. In addition to the above, by their actions and omissions, Defendants also breached their duty and were negligent, grossly negligent and/or acted with malice in at least the following regards:

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representatives, and employees directly concerned with the installation and maintenance of equipment and accessories" must comply with the safety requirements and specifications outlined therein;

- c. Failing to observe clearly visible warning sign concerning the low structure, failing to take opportunity to detour low structure, and failing to take any evasive action to avoid striking the overhead structure, all in violation of state and federal regulations;
- d. Failure to ensure that the tractor, flatbed trailer and load had been properly and timely inspected as required by state and federal regulations including, but not limited to, 49 CFR §396.17 and §396.21;
- e. Violation of the general duty under state and federal regulations including, but not limited to, 49 CFR §396.3, of a trucking company to maintain its vehicles and trailers in good working order, to maintain repair records and inspection reports, and to make periodic inspections of each vehicle and trailer;
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- i. Failure to properly maintain and service the tractor, flatbed trailer and load;
- j. Failing to adequately train Thacker how to test for a defective tractor, flatbed trailer and load and failing to warn Thacker of the dangers of operating the trailer without ensuring the adequacy of the straps and other devices securing the load;
- k. Failing to exercise reasonable care to discover the dangerous condition or character of the tractor, flatbed trailer and load before allowing the trailer to be used on the roadways;
- l. Failing to warn consumers of the unreasonably dangerous nature of the tractor, flatbed trailer and load;
- m. Entrusting the tractor, flatbed trailer and load to Thacker, an incompetent or reckless driver, whom the owner knew or should have known was

unlicensed, incompetent, or reckless, and whose negligence on the day of the collision was one of the proximate causes of the collision;

- n. Driving (and permitting employee to drive) at a high rate of speed under the conditions; and
- o. Failing to exercise that degree of care that other drivers would have exercised in maintaining an assured clear distance between vehicles, keeping a proper lookout, stopping safely and/or operating a dangerous instrumentality on the roadways.

31. Defendants' conduct and/or omissions identified above constitute a breach of their duties owed by statutory provision, common law and other authorities, the breach of which proximately caused damages.

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Count II: Infliction of Emotional Distress and Mental Anguish

33. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

34. In addition to Plaintiff's physical pain and suffering, Defendants' breach of duty directly and proximately caused Plaintiff to suffer significant psychological difficulties including, but not limited to, psychological distress, depression, anxiety, back depression inventory and PTSD. She has been prescribed psychotropic medications and is undergoing treatment.

35. Defendants knew or should have known Defendants' conduct involved an unreasonable risk of causing emotional distress to Plaintiff. Defendants' conduct caused Plaintiff to suffer medically diagnosable and significant emotional distress.

36. Defendants' acts and omissions also demonstrated a conscious disregard for Plaintiff's emotional well-being and safety, as well as the emotional well-being and safety of other travelers on the roadways where Defendants' tractor-trailer traveled.

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41. An inspection of these items would have revealed that the tractor, trailer and load were improperly designed, and/or dangerously loaded while in Defendants' possession, and Defendants knew or should have known of the inadequacy Defendants' load securement process.

42. These facts surrounding the collision establish that (a) there was a duty to preserve evidence; (b) Defendants negligently or intentionally (collectively) spoliated the Melton tractor, the flatbed trailer, the forklifts that were on the flatbed, and all mechanisms that were used to secure the load, as well as related design, repair/replacement records; and (c) Defendants' spoliation has prejudiced Plaintiff's ability to present her case.

Count IV: Damages

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44. Defendants' acts and/or omissions were a proximate cause of the following injuries suffered by Plaintiff, for which Plaintiff seeks recovery through this Petition:

- a. Actual damages;
- b. Lost wages;
- c. Past, present, and future medical expenses for physical, emotional and mental health;
- d. Diminished earning power or earning capacity in the past and in the future;
- e. Damages awarded for the purpose of compensating Plaintiff for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind in the past and the future;
- f. All other damages naturally and/or incidentally flowing from Defendants' conduct and/or omissions;
- g. Exemplary and punitive damages as well as reasonable attorneys' fees and costs of court;
- h. Prejudgment interest; and
- i. Post judgment interest.

45. Plaintiff seeks unliquidated damages in an amount that is within the jurisdictional limits of the court.

Count V: Exemplary Damages

46. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

47. Punitive damages are warranted against Defendants for blatantly ignoring safety provisions of the FMSCR and other federal and state laws, as well as ignoring industry research establishing the inadequacy of the load securement devices, the result of which led to this tragic collision. Defendants should not have allowed the defective or inadequate instrumentalities to have been placed on the highways. This and other conduct constitutes gross negligence, for which exemplary or punitive damages should be awarded.

48. Plaintiff, therefore, seeks exemplary damages for injuries caused by Defendants' gross negligence under Texas Civil Practice & Remedies Code section 41.003(a)(3), as defined by Section 41.001(11). Plaintiff also seeks exemplary damages as a result of Defendants' willful acts or omissions or gross neglect, as provided in Texas Constitution and Texas Civil Practice & Remedies Code. Finally, Plaintiff seeks exemplary damages under any and all other statutes, acts, or law providing for such damages.

Count VI: Attorneys' Fees

49. Plaintiff realleges and incorporates by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

50. As a result of Defendants' acts and omissions, Plaintiff has retained counsel and seeks reimbursement for reasonable attorney fees, as authorized by applicable law and in equity.

JURY DEMAND

51. Plaintiff demands a trial by jury as to all claims and all issues properly triable thereby.

PRAYER

Wherefore, Premises Considered, Plaintiff prays that Defendants be cited to appear and answer herein and, upon final trial hereof, that Plaintiff have and recover from Defendants all allowable damages, exemplary damages, pre and post-judgment interest, costs of court, attorney's fees, and such other and further relief, both general and special, at law and in equity, to which they may be justly entitled.

Respectfully Submitted,

/s/ Aubrey "Nick" Pittman
AUBREY "NICK" PITTMAN
State Bar No. 16049750

THE PITTMAN LAW FIRM, P.C.
100 Crescent Court, Suite 700
Dallas, Texas 75201-2112
214-459-3454
214-853-5912 – fax
pittman@thepittmanlawfirm.com

FORM NO. 353-4—CITATION
THE STATE OF TEXAS

CERT/MAIL COH

To: BILL MELTON TRUCKING INC
BY SERVING CHAIRMAN OF THE STATE HIGHWAY AND
PUBLIC TRANSPORTATION COMMISSION
125 E. 11TH STREET
AUSTIN, TX, 78701-2483

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURES petition, a default judgment may be taken against you.

Your answer should be addressed to the clerk of the 298th District Court
at 600 Commerce Street, Dallas, Texas 75202.

Said PLAINTIFF being BRIANNA PARKER

Filed in said Court 22nd day of April, 2015 against
BILL MELTON TRUCKING INC. AND EDWARD THACKER

For suit, said suit being numbered DC-15-04560-M the nature of which demand is as follows:

Suit On MOTOR VEHICLE ACCIDENT etc.
as shown on said petition , a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office on this the 17th day of June, 2015

ATTEST: FELICIA PITRE

Clerk of the District Courts of Dallas, County, Texas

Felicia M. Parker, Deputy
SPRINGE MCKINLEY



DALLAS COUNTY CLERK
TAXES NOT PAID

CITATION

No.: DC-15-04560-M

BRIANNA PARKER

VS.

BILL MELTON TRUCKING INC, ET AL

ISSUED

ON THIS THE 17TH DAY OF JUNE, 2015

FELICIA PITRE

Clerk District Courts,
Dallas County, Texas

By SPRINGE MCKINLEY, Deputy

Attorney for : Plaintiff

AUBREY "NICK" PITTMAN
THE PITTMAN LAW FIRM
100 CRESCENT COURT SUITE 700
DALLAS, TEXAS 75201
214-459-3454

OFFICER'S RETURN FOR INDIVIDUALS

Cause No. DC-15-04560

Court No: 298th District Court

Style: BRIANNA PARKER

vs.
BILL MELTON TRUCKING INC, et al

Received this Citation the _____ day of _____, 20 ____ at _____ o'clock. Executed at _____, within the County of _____, State of _____, on the _____ day of _____, 20 ____, at _____ o'clock, by _____ delivering to the within named _____ each in person, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery.

OFFICER'S RETURN

Received this Citation the 17th day of June, 2015 at 2:47 o'clock P.M. Executed at _____, within the County of _____, State of _____, on the _____ day of _____, 20_____, at _____ o'clock _____. M. by summoning _____ the within named Corporation, President - Vice President - Registered Agent in person, or the said _____

a true copy of this citation together with the accompanying copy of Plaintiffs original petition, WAS MAILED UNITED STATES CERTIFIED MAIL RETURN RECEIPT REQUESTED having first indorsed on same the date of delivery

The distance actually traveled by me in serving such process was 76.00 miles and my fees are as follows:

For Serving Citation	\$ <u>76.00</u>
For Mileage	\$ <u> </u>
For Notary	\$ <u> </u>
Total Fees	\$ <u> </u>

Sheriff _____
County of _____
State of _____
By _____

卷之三

Signed and sworn to me by the said _____ before me this _____ day of _____, 20_____, to certify which witness my hand and seal of office.

9214-8901-0661-5400.0060-2944-30
Seal

State & County of

FORM NO. 353-4—CITATION
THE STATE OF TEXAS

CERT/MAIL COH

To: EDWARD THACKER
BY SERVING CHAIRMAN OF THE STATE HIGHWAY AND
PUBLIC TRANSPORTATION COMMISSION
125 E. 11TH STREET
AUSTIN, TX, 78701-2483

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURES petition, a default judgment may be taken against you.

Your answer should be addressed to the clerk of the 298th District Court at 600 Commerce Street, Dallas, Texas 75202.

Said PLAINTIFF being BRIANNA PARKER

Filed in said Court 22nd day of April, 2015 against
BILL MELTON TRUCKING INC. AND EDWARD THACKER

For suit, said suit being numbered DC-15-04560-M the nature of which demand is as follows:
Suit On MOTOR VEHICLE ACCIDENT etc.
as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

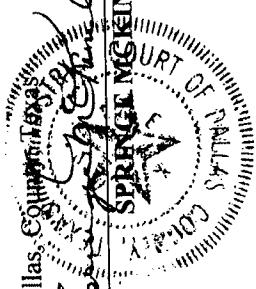
WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office on this the 17th day of June, 2015

ATTEST: FELICIA PITRE

Clerk of the District Courts of Dallas, County Texas
By Springe McKinley, Deputy

Deputy Clerk, County of Dallas, Texas
NOT CONSTABLY
THIS IS NOT PAID



OFFICER'S RETURN FOR INDIVIDUALS

Cause No. DC-15-04560

Case No: 298th District Court

Style: BRIANNA PARKER

VS.
BILL MELTON TRUCKING INC, et al

۸۵

Received this Citation the _____ day of _____, 20 _____ at _____ o'clock. Executed at _____, within the County of _____, State of _____, on the _____ day of _____, 20 _____, at _____ o'clock, by _____ each in person, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery.

OFFICER'S RETURN

FOR CORPORATIONS

RECEIVED
MAILED UNITED STATES CERTIFIED MAIL RETURN RECEIVED
a true copy of this citation together with the accompanying copy of Plaintiff's original petition, WAS MAILED UNITED STATES CERTIFIED MAIL RETURN RECEIVED
REQUESTED having first indorsed on same the date of delivery.

For Serving Citation \$ 74.00
For Mileage \$
For Notary \$
Total Fees \$

Sheriff _____
County of _____
State of _____
By _____

(Must be verified if served outside the State of Texas)
State of _____ County of _____
Signed and sworn to me by the said _____ 20

9214-8901-0661-5400-0060-2913-38 Seal

State & County of

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To: SOUTHERN VANGUARD INSURANCE COMPANY
5525 LBJ FREEWAY
DALLAS, TEXAS 75240

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **95th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being OSCAR BONILLA

Filed in said Court **8th day of June, 2015** against

SOUTHERN VANGUARD INSURANCE COMPANY

For Suit, said suit being numbered **DC-15-06710-D** the nature of which demand is as follows:
Suit on **CNTR CNSMR COM DEBT** etc. as shown on said petition,
a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 17th day of June, 2015.

ATTEST: FELICIA PITRE, CLERK OF THE DISTRICT COURTS OF DALLAS, COUNTY, TEXAS
By 
SPRING MCKINLEY



**ATTY
CITATION**

DC-15-06710-D

**OSCAR BONILLA, et al
vs.
SOUTHERN VANGUARD
INSURANCE COMPANY**

ISSUED THIS
17th day of June, 2015

**FELICIA PITRE
Clerk District Courts,
Dallas County, Texas**

By: SPRING MCKINLEY, Deputy

**Attorney for Plaintiff
TYLER M. BLEAU
THE LAW OFFICE OF FARREN
SMITH PLLC**

**26619 INTERSTATE 45 SOUTH
THE WOODLANDS, TEXAS 77380
713-861-0015**

**ATTORNEY FOR DEFENDANT
THIS IS NOT PAID
PAYS**

OFFICER'S RETURN

Case No. : DC-15-06710

Court No. 95th District Court

Style: OSCAR BONILLA, et al

vs.

SOUTHERN VANGUARD INSURANCE COMPANY

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____. M. Executed at _____
within the County of _____ at _____ o'clock _____. M. on the _____ day of _____
20_____, by delivering to the within named _____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by
me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.
(Must be verified if served outside the State of Texas.)

For serving Citation \$ _____
For mileage \$ _____
For Notary \$ _____
County, _____
of _____
By _____
Deputy _____

before me this _____ day of _____, 20_____,

Signed and sworn to by the said _____
to certify which witness my hand and seal of office.

Notary Public _____
County _____



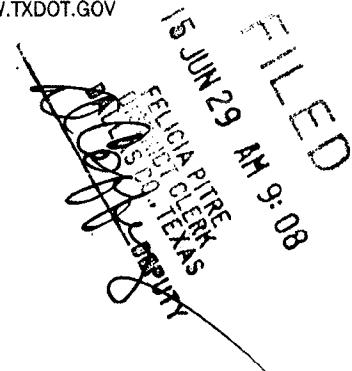
Texas Department of Transportation

125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8630 | WWW.TXDOT.GOV

June 25, 2015

Edward Thacker
112 N. Porter St.
Stuttgart, AR 72160

Re: OGC No. 41285
Cause No. DC-15-04560-M
Dallas County
Plaintiff: Brianna Parker
Defendant: Edward Thacker



Mr. Thacker:

In compliance with the Texas long-arm statute, Texas Civil Practice and Remedies Code, Chapter 17, Subchapter D, the Chair of the Texas Transportation Commission was duly served with the enclosed Citation and Plaintiff's Original Petition and Request for Disclosures on June 23, 2015.

This agency's only role in the process is to serve as an out-of-state defendant's agent for service of process. We are unable to answer any questions or respond to correspondence regarding this lawsuit. All questions or concerns should be addressed to the attorney noted below.

Office of General Counsel

Enclosures

cc: Aubrey "Nick" Pittman
Attorney at Law
100 Crescent Court, Suite 700
Dallas, TX 75201
Telephone (214) 459 3454

U.S. Certified Mail No. 7011 0470 0002 1476 9281
Return Receipt Requested

OUR GOALS
MAINTAIN A SAFE SYSTEM • ADDRESS CONGESTION • CONNECT TEXAS COMMUNITIES • BEST IN CLASS STATE AGENCY

An Equal Opportunity Employer



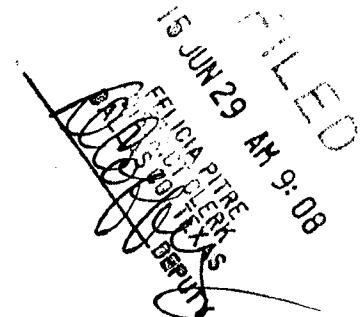
Texas Department of Transportation

125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8630 | WWW.TXDOT.GOV

June 25, 2015

Bill Melton Trucking, Inc.
R/A Carolyn Melton
250 Somerset Ln.
Cord, AR 72524

Re: OGC No. 41284
Cause No. DC-15-04560-M
Dallas County
Plaintiff: Brianna Parker
Defendant: Bill Melton Trucking, Inc. R/A Carolyn Melton



Ms. Melton:

In compliance with the Texas long-arm statute, Texas Civil Practice and Remedies Code, Chapter 17, Subchapter D, the Chair of the Texas Transportation Commission was duly served with the enclosed Citation and Plaintiff's Original Petition and Request for Disclosures on June 23, 2015.

This agency's only role in the process is to serve as an out-of-state defendant's agent for service of process. We are unable to answer any questions or respond to correspondence regarding this lawsuit. All questions or concerns should be addressed to the attorney noted below.

Office of General Counsel

Enclosures

cc: Aubrey "Nick" Pittman
Attorney at Law
100 Crescent Court, Suite 700
Dallas, TX 75201
Telephone (214) 459 3454

U.S. Certified Mail No. 7011 0470 0002 1476 9274
Return Receipt Requested

OUR GOALS

MAINTAIN A SAFE SYSTEM • ADDRESS CONGESTION • CONNECT TEXAS COMMUNITIES • BEST IN CLASS STATE AGENCY

An Equal Opportunity Employer

No. 15-04560

Christi Underwood

BRIANNA PARKER,

§ IN THE DISTRICT COURT

Plaintiff,

§

v.

§

BILL MELTON TRUCKING INC., and
EDWARD THACKER,

§ DALLAS COUNTY, TEXAS

Defendants.

§ 298th JUDICIAL DISTRICT

PLAINTIFF'S JURY DEMAND

COMES NOW Plaintiff Brianna Parker, requesting a trial by jury and tendering the required jury fee pursuant to Rule 216 of the Texas Rules of Civil Procedure.

Respectfully Submitted,

/s/ Aubrey "Nick" Pittman

AUBREY "NICK" PITTMAN
State Bar No. 16049750

THE PITTMAN LAW FIRM, P.C.

100 Crescent Court, Suite 700
Dallas, Texas 75201-2112
214-459-3454
214-853-5912 – fax
pittman@thepittmanlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2015, the foregoing pleading was filed with the Dallas County District Clerk, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record, if any, who have consented in writing to accept this Notice as service of documents by electronic means.

/s/ Aubrey “Nick” Pittman
AUBREY “NICK” PITTMAN

Dianne Coffey

OFFICER'S RETURN

Case No. : DC-15-04560

Court No.298th District Court

Style: BRIANNA PARKER

vs.

BILL MELTON TRUCKING INC, et al

Edward Thacker

came to hand on the 20th day of May, 2015 at 12:00 o'clock P M. Executed at 112 N Porter St.
within the County of Arkansas at 8:13 o'clock P M. on the 1st day of June
20 15, by delivering to the within named the Mother of Edward Thacker, whom refused
to accept service, so papers were placed on front porch at her feet.

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by
me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand:

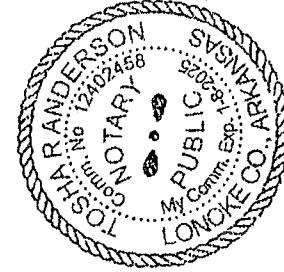
For serving Citation \$ _____
For mileage \$ _____
of _____ County, _____
For Notary \$ _____
By _____ Deputy _____

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said Tisha R Anderson before me this 20th day of June, 20 15.

to certify which witness my hand and seal of office.

M. L. Blair
Notary Public
Charudaman, L�vre



CAUSE NUMBER DC-15-04560

BRIANNA PARKER,

IN THE DISTRICT COURT

Plaintiff,

298th JUDICIAL DISTRICT

vs.

BILL MELTON TRUCKING INC., and
EDWARD THACKER,

DALLAS COUNTY, TEXAS

Defendants

**DEFENDANT BILL MELTON TRUCKING INC.'S
ORIGINAL ANSWER TO
PLAINTIFF'S ORIGINAL PETITION**

COMES NOW, Defendant, BILL MELTON TRUCKING INC., and files this, its Original Answer to Plaintiff's Original Petition, and respectfully shows the Court as follows:

**I.
GENERAL DENIAL**

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every allegation of Plaintiff's pleadings and demands that Plaintiff prove his allegations by a preponderance of the evidence.

**II.
AFFIRMATIVE DEFENSES**

2. Pleading further, Defendant asserts that the Plaintiff's recovery, if any, is barred entirely, or should be reduced by the comparative responsibility of the Plaintiff and/or third parties.

3. Further answering, if the same be necessary, Defendant contends that the allegations made the basis of the claims and alleged damages, if any, of Plaintiff were caused by acts and/or omissions of persons or third parties over whom this Defendant had no control, and for whom this Defendant is not in law responsible. Such acts and/or omissions were the sole proximate cause or a proximate cause or a producing cause of the occurrence in question and the alleged damages, if any.

4. Pleading further, Defendant asserts that the Plaintiff's alleged injuries and damages, if any, were not proximately caused by an act or omission of Defendant.

5. Pleading further, Defendant asserts that the Plaintiff's claims are barred because Defendant's conduct is not the producing cause, proximate cause, or a cause-in-fact of Plaintiff's alleged damages.

6. Pleading further, Defendant invokes §41.0105 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE and requests that to the extent Plaintiff seeks recovery of medical or healthcare expenses, the evidence to prove such loss be limited to the amount actually paid or incurred by or on behalf of the Plaintiff, as opposed to the amount charged.

7. Pleading further, Defendant alleges that the percentage responsibilities of the Plaintiff, each Defendant, each settling person, and each Responsible Third Party should, be submitted to the jury for determination pursuant to the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

8. Pleading further, if the Defendant is found liable for damages, Defendant intends to seek a reduction in the percentage of Plaintiff's injuries and damages attributed to third parties.

9. Pleading further, Defendant asserts that pre-judgment interest, if any, as requested in the Plaintiff's Original Petition, is limited in accordance with §304.104 *et seq.* of the TEXAS FINANCE CODE.

10. Defendant asserts Plaintiff's damages sought were caused by Plaintiff's pre-existing injury and/or condition as well as Plaintiff's subsequent accidents and injuries.

11. Pleading further, and in the alternative, if such is necessary, and subject to the foregoing pleas and without waiving same, Plaintiff has failed to mitigate her damages because the Plaintiff and/or her attorneys paid or agreed to pay medical expenses incurred by the Plaintiff through a "Letter of Protection" and/or a contractual agreement tied to the outcome of this suit and failed to make challenges to the reasonableness of any of those charges or negotiate a reduced rate from the healthcare providers. Further, Plaintiff's failure to obtain private health insurance and submit her medical bills and expenses for injuries alleged related to the incident in question is a violation of federal law and the Affordable Care Act's individual insurance mandate. Such steps would have been done by any reasonable third-party payor under these circumstances, and the Plaintiff has instead paid and/or agreed to pay full charges for any and all medical services rendered in an effort to enhance the recovery of medical and healthcare expenses under Texas Civil Practice and Remedies Code Section 41.0105. Therefore, Plaintiff has increased her damages rather than take the reasonable steps to ensure the reasonableness and necessity of the charges incurred and mitigate her economic damages.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant, BILL MELTON TRUCKING INC., prays that upon the final trial hereof Plaintiff takes nothing against Defendants. Further, Defendant asks the Court to enter Judgment that Plaintiff takes nothing, dismiss Plaintiff's suit with prejudice, assess costs against Plaintiff, and award Defendant all other relief to which it is entitled. Further, Defendant prays as alleged hereinabove that, in the unlikely event that any recovery by Plaintiff against it herein, which is denied, Defendant be allowed full benefit of all laws of Texas limiting damages as well any prohibitions and/or limitations allowed under the Texas Constitution in the event Plaintiff seeks exemplary damages. Defendant also prays for such other and further relief to which he is justly entitled at law and in equity.

Respectfully Submitted,

THE BASSETT FIRM

MIKE H. BASSETT

SBN: 01890500

Two Turtle Creek Village
3838 Oak Lawn Avenue, Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
efile@thebassettfirm.com

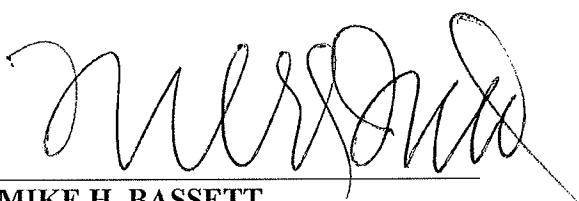
ATTORNEY FOR DEFENDANT,
BILL MELTON TRUCKING INC.

CERTIFICATE OF SERVICE

I certify that a true copy of this document was forwarded to the following counsel of record on this 10th day of July, 2015, pursuant to the Texas Rules of Civil Procedure:

Via eFile Texas eServe

Mr. Nick Pittman
The Pittman Law Firm, P.C.
100 Crescent Court, Ste. 700
Dallas, Texas 75201-2112



MIKE H. BASSETT